

AMENDMENT NUMBER 2
TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES
AND
THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
RELATING TO
THE PRINCIPLES GOVERNING CO-OPERATION IN
RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT
AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

(SHORT TITLE: US/UK DEFENSE EQUIPMENT CO-OPERATION MEMORANDUM)

INTRODUCTION

This Amendment Number 2 to the US/UK Defense Equipment Co-operation Memorandum of December 13, 1994, is made between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, hereinafter referred to as the "Governments".

The Governments recognize the benefits of improving the flow of technologies and Technical Information between the Governments and between their defense-related industries. Accordingly, the Governments have reached the following understandings.

AMENDMENT

The US/UK Defense Equipment Co-operation Memorandum is hereby amended, as authorized in Section 6, entitled "Annexes", to add the attached as Annex VII, entitled "Flow of Technical Information".

ENTRY INTO EFFECT

This Amendment, signed in duplicate, both texts being equally authentic, will enter into effect upon signature by authorized representatives of both Governments and will remain in effect for the same period as the US/UK Defense Equipment Co-operation Memorandum which it amends. Unless specifically amended herein, all other provisions of the US/UK Defense Equipment Co-operation Memorandum remain unchanged.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



Signature

E.C. Aldridge, Jr.

Name

Under Secretary of Defense (AT&L)

Title

Winchester, United Kingdom

Location

24 October 2002

Date

FOR THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND:



Signature

Robert Walmsley

Name

Chief of Defence Procurement

Title

Winchester, United Kingdom

Location

24 October 2002

Date

ANNEX VII

FLOW OF TECHNICAL INFORMATION

Section 1 INTRODUCTION

1.0 This Annex implements the flow of technologies and Technical Information provisions of the Declaration of Principles for Defense Equipment and Industrial Cooperation between the Department of Defense (DoD) of the United States of America and the Ministry of Defence (MoD) of the United Kingdom of Great Britain and Northern Ireland dated 5 February 2000.

Section 2 DEFINITIONS OF TERMS

2.0 The Governments have jointly decided upon the following definitions for terms used in this Annex:

Contracting Agency	An entity within the United States Government (USG) or Her Majesty's Government (HMG), which has authority to enter into, administer, or terminate contracts.
Contractor	An entity awarded a contract by a Contracting Agency of the USG or HMG.
Technical Information	Knowledge of a scientific or technical nature that can be communicated by any means, regardless of form or type, including, but not limited to, photographs, reports, manuals, threat data, experimental data, test data, computer software including source code, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether subject to copyright, patent or other legal protection.
Third Party	A government other than the USG or the HMG and any person or other entity whose government is not the USG or HMG.

Section 3 OBJECTIVES

3.1 The objectives of this Annex are to:

3.1.1 Ensure the timely flow of Technical Information between the Governments and between their defense-related industries;

3.1.2 Establish arrangements to improve the processes relating to the disclosure, transfer, and use of Technical Information between the Governments consistent with respective national export control laws, regulations, and procedures, national disclosure policies, and proper safeguards; and

3.1.3 Encourage the harmonization of the regulations, policies, and procedures of the Governments for controlling disclosure, transfer, and use of Technical Information in the field of defense.

Section 4 GENERAL PROVISIONS

4.1 This Annex will be in accordance with the Governments' respective national laws, regulations, and procedures and carried out in accordance therewith. The responsibilities of the Governments under this Annex will be subject to the availability of funds for such purposes.

4.2 Where a Government becomes aware of a subsequent change to its national laws, regulations, policies, or procedures that may affect the understandings established under this Annex, that Government will consult with the other Government to mutually determine whether this Annex should be amended.

Section 5 MANAGEMENT AND ORGANIZATION

5.1 The implementation and application of this Annex will be monitored by the Joint Technical Information Group (JTIG). The JTIG will be jointly chaired by the responsible Deputy Director of Defense Procurement on behalf of the USG and by the Director of Intellectual Property Rights on behalf of HMG. The co-chairs will select other individuals, as appropriate, to serve on the JTIG. The JTIG may establish working groups on particular issues as needed.

5.2 The JTIG will be responsible for:

5.2.1 Executive-level monitoring of the implementation and application of this Annex.

5.2.2 Encouraging the harmonization of the Governments' regulations, policies, and procedures for controlling disclosure, transfer, use, and related matters of Technical Information in the field of defense.

5.2.3 Consideration of proposals for harmonizing and improving provisions related to the disclosure, transfer, and use of Technical Information in co-operative project arrangements or governmental sales arrangements.

5.2.4 Exploration of contractual and related issues regarding shared data environments.

5.2.5 Undertaking appropriate steps to explore the development of training opportunities or forums concerning Technical Information flow for government and industry personnel involved in co-operative project arrangements or governmental sales arrangements.

5.2.6 Facilitating the resolution of issues that arise relating to implementation of this Annex to limit the need to refer the issue to higher officials for resolution.

5.2.7 Facilitating the reciprocal treatment of contractors by the Governments regarding Technical Information.

5.2.8 Examining methods of assisting co-operative projects in the proper use of streamlined export license processes.

Section 6 DEFENSE TRADE AND SECURITY INITIATIVES

6.1 The Governments will use their best efforts to take full advantage of governmental defense trade and security initiatives (including global project authorizations) in the planning and implementation of co-operative project arrangements.

Section 7 TECHNICAL INFORMATION PROVISIONS

7.1 In keeping with the goal of reducing barriers to effective defense co-operation, the Governments will use their best efforts to ensure that, under co-operative project arrangements, the USG and HMG receive Technical Information, including source code, acquired in or made available for the scope of work of those arrangements, that is necessary to operate fully and safely, support, and dispose of their defense systems, to the extent consistent with their respective export control laws, regulations, and procedures and national disclosure policies and the specific disclosure and use provisions of the pertinent co-operative project arrangements.

7.2 Recognizing the importance of ensuring consistency of the provisions for information disclosure and use of co-operative project arrangements with those of the contracts that implement the scope of work of those arrangements, the Governments will ensure co-ordination with, and as necessary between, their acquisition (including contracting) personnel and intellectual property rights personnel, during the negotiation of such arrangements. The Governments will also ensure that US and UK industries are appropriately consulted during the negotiation of co-operative project arrangements leading to jointly funded contracts, to ensure the consistency of such contracts with the provisions of the pertinent co-operative project arrangements.

7.3 In each co-operative project arrangement that involves contracting for the work required under such arrangement, each Government's Contracting Agency will insert into its contracts suitable provisions to satisfy the arrangement's provisions regarding export controls, disclosure, retransfer, and use of Technical Information and defense equipment.

7.4 In any co-operative project arrangement that involves jointly funded contracts for the work required under those arrangements, the applicable Government's Contracting Agency will keep the other Government informed of developments during the contracting process. Source selection information will be transferred only to individuals who have signed forms agreeing not to disclose such information. Such forms will not prohibit the disclosure of project-related Technical Information that is not source selection information to authorized Government officials.

7.5 The Government of a Contracting Agency will notify the other Government, in a timely manner, of any requirement for the export, disclosure, transfer, and use of Technical Information of a co-operative project arrangement which might not be met under a contract implementing the affected arrangement. When any requirement for the export, disclosure, transfer, and use of Technical Information of a co-operative project arrangement cannot be met, the Governments will consult with one another to determine how to proceed with the execution of the affected arrangement.

7.6 The Governments will make their best efforts to identify the Technical Information that will be required to achieve the objectives and scope of an individual co-operative project arrangement. The Governments will also make their best efforts to identify that Technical Information that may be subject to restrictions as a result of national disclosure policies and export control requirements.

7.7 To the extent that an individual co-operative project arrangement provides, either Government may place a contract on behalf of the other Government or both Governments.

7.8 Where a Government wishes to purchase directly from industry defense equipment or software that was developed by or on behalf of the other Government, the Governments will consult, upon the purchasing Government's request, as to the appropriateness of entering into a co-operative project arrangement or a governmental sales arrangement which includes the provision of Technical Information and technical assistance necessary to fully and safely operate, support, and dispose of the defense equipment and software concerned.

7.9 When such action would be appropriate and efficient in implementing a co-operative project arrangement or governmental sales arrangement, and subject to national laws, regulations, and procedures regarding security and export controls and to the information disclosure and use provisions of the applicable arrangement, each Government will consider permitting Technical Information generated by that Government's personnel, which is in the possession of its Contractors, to be transferred directly by those Contractors to the other Government or that other Government's Contractors.

7.10 To the extent consistent with national laws, regulations, and procedures, each Government may choose to obtain defense equipment or services either through a co-operative project arrangement or a governmental sales arrangement, or directly from industry.

7.11 Where a Government is requested to provide defense equipment, software, or services to the other Government, the provisions of the associated governmental sales arrangement may reflect the other Government's request for greater rights in Technical Information than would normally be provided under such arrangements. In the event that such rights cannot be secured, or can only be secured at additional cost, the other Government will be promptly notified of such event.

7.12 It is recognized that there may be instances in which a Government makes a direct commercial purchase of defense equipment or software that has been developed under contracts funded by the other Government. It is further recognized that in some of those instances the purchasing Government might place contracts relating to that equipment or software which result in the generation of additional Technical Information relating to that equipment or software. If the developing Government requests this additional Technical Information, the Governments may enter into a governmental sales arrangement pursuant to which the purchasing Government uses its best efforts to provide the developing Government the right to receive, use or have used, any such additional Technical Information necessary to enable the developing Government to repair, maintain and operate its defense equipment or software.

7.13 Subject to security and export control laws, regulations, and procedures, and national disclosure policies, Technical Information provided with a Request for Tender/Proposal by a Government to qualified sources in the other Government's country will be the same as that provided to its national qualified sources.

7.14 To assist in protecting contractor Technical Information arising under a co-operative project arrangement, the contractor will be directed to legitimately mark that Technical Information setting out any restrictions relating its disclosure or use on the basis that such Technical Information will be otherwise presumed to be available for unrestricted export, disclosure, transfer, and use by the contracting Government.

7.15 Recognizing the importance of source code in co-operative project arrangements, the Governments note that Technical Information includes source code and that the provisions of this Section 7, entitled "Technical Information Provisions", apply thereto.

Section 8 RECOUPMENT CHARGES

8.1 Regarding governmental sales arrangements for defense equipment between the Governments, the selling Government will waive recoupment charges related to recovery of its non-recurring development and production costs on a case-by-case basis, to the extent authorized under its national laws and regulations. Regarding direct commercial sales arrangements between industry and one Government involving defense equipment developed by or for the other Government, the developing Government will waive, or otherwise not impose, recoupment charges related to recovery of its non-recurring development and production costs on a case-by-case basis, to the extent authorized under its national laws, regulations, and procedures.

8.2 Regarding governmental sales arrangements between a Government and a Third Party, and direct commercial sales arrangements between industry and a Third Party, co-operative project arrangements will not contain provisions requiring or authorizing the DoD and MoD to impose upon such sales arrangements recoupment charges for the recovery of each other's non-recurring costs for the co-operative development or production of defense equipment and Technical Information. The foregoing sentence will not apply to co-operative project arrangements into which the DoD and MoD have entered prior to the date that this Annex becomes effective, and will also not apply to individual co-operative project arrangements in those cases in which the DoD and MoD mutually decide that such application is not in their best interests.

Section 9 FINANCIAL PROVISIONS

9.1 Each Government will bear the costs associated with its responsibilities under this Annex.

Section 10 AMENDMENTS

10.1 This Annex may be amended by mutual written consent of authorized representatives of both Governments.